Bank is not liable. *McBride* v. *Illinois Nat. Bank*, 121 N. Y. Supp. 1041 (Sup. Ct., App. Div.).

In the absence of special agreement many authorities hold the depositary bank liable for any default of its correspondents on the ground of *del credere* agency. *Exchange National Bank of Pittsburgh* v. *Third National Bank of New York*, 112 U. S. 276. Other courts hold that the depositary bank agrees merely to exercise due care in choosing a correspondent bank as agent for the depositor. *Wilson* v. *Carlinville National Bank*, 187 Ill. 222. See 14 HARV. L. REV. 384. Under the latter rule the E Bank alone would be liable in the principal case and the special agreement is immaterial. Applying the former rule, as the court here did, the result is still correct; for if the agreement with the depositary bank makes the subsequent banks the depositor's agents the E Bank only is liable, while if its effect is limited to the B Bank the C Bank becomes the depositary and is alone liable. But the theoretically correct result is reached under trust principles rather than rules of agency. See 18 HARV. L. REV. 300. Thus the D Bank has a right of action against the E Bank which it holds in trust for the C Bank and the C Bank holds this equitable right in trust for the B Bank which in turn holds its right in trust for the A Bank. *Cf. Commercial Bank of Pennsylvania* v. *Armstrong*, 148 U. S. 50. Under this theory the agreement with the depositary bank becomes immaterial, since the only claim asserted is through, not against, the B Bank.

BILLS AND NOTES — DEFENSES — FRAUD AS DEFENSE AGAINST INDORSEE: BURDEN OF PROOF. — The indorsee of a promissory note sued the maker, who pleaded that the note was procured from him by fraud. *Held*, that the plea is not demurrable. *Hill* v. *Ward*, 91 N. E. 38 (Ind.).

In general a transferee of a note can recover unless he is shown not to be a *bonâ fide* purchaser. *Collins* v. *Gilbert*, 94 U. S. 753. But if the note was fraudulently procured, a presumption arises that it has merely been given to the indorsee for collection. See *Bailey* v. *Bidwell*, 13 M. & W. 73. This has led the courts to declare that proof of fraud shifts to the plaintiff the burden of proving that he took without notice and for value. *Hutchinson* v. *Boggs & Kirk*, 28 Pa. St. 294. It would follow that the defendant need only plead the fraud of the payee. *Hutchinson* v. *Boggs & Kirk*, *supra*. It is submitted, however, that since the defendant is relying upon the affirmative defense of fraud, he should bear the burden of proving that his defense is available against the present plaintiff. His plea, therefore, should contain an allegation that the plaintiff took with notice or without giving value. *Harvey* v. *Towers*, 6 Exch. 656. The presumption raised by proof of fraud would impose upon the plaintiff the burden of going forward with evidence to rebut that presumption, but when the evidence is all in, the defendant should fail unless the preponderance is in his favor.

BILLS OF PEACE — INSURANCE COMPANIES SEEKING TO ENJOIN SEPARATE ACTIONS. — Four independent actions were brought at law in the state court against different insurance companies upon similar policies covering the same loss. Two of the defendants removed the cases to the federal court and thereafter joined in a bill in equity against the plaintiff and the other two defendants to have the respective liabilities of the several companies determined in a single action. *Held*, that the bill will not lie. *Rochester German Ins. Co.* v. *Schmidt*, 175 Fed. 720 (C. C. A., Fourth Circ.).

For a discussion of the principles involved see 23 HARV. L. REV. 480.

CARRIERS — LOSS OR INJURY TO GOODS — GOODS SEIZED BY LEGAL PROCESS UNDER UNCONSTITUTIONAL STATUTE. — The plaintiff delivered liquors to the defendant for carriage. While in the defendant's possession, they were seized by the sheriff and destroyed under a warrant issued in conformity with an unconstitutional state statute. The defendant after seizure and before destruc-